

## 21 C.J.S. Courts § 32

Corpus Juris Secundum | May 2023 Update

### Courts

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### II. Jurisdiction of Courts

#### C. Jurisdiction of Subject Matter or Cause of Action

##### 2. Amount in Controversy Within Subject Matter Jurisdiction

##### b. Determination of Amount in Controversy Within Subject Matter Jurisdiction

§ 32. Attorney's fees included as amount in controversy for subject matter jurisdiction

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Courts](#)  121(5), 169(4)

**In general, attorney's fees claimed as a part of the specific demand in a suit are considered in determining the amount in controversy, but an exception may apply if attorney's fees are allowable only as costs and costs are excluded.**

Some state statutes generally exclude attorney's fees from consideration in determining the amount in controversy for jurisdictional purposes,<sup>1</sup> and specifically exclude postjudgment attorney's fees,<sup>2</sup> although attorney's fees included in a demand as a component of the original amount sought and awarded in a prior action are part of the amount in controversy as opposed to fees accruing in the present action.<sup>3</sup> If a claim for attorney's fees constitutes a separate cause of action, it cannot be aggregated with the main claim to determine the jurisdictional amount.<sup>4</sup>

Other state statutes include a demand for attorney's fees in a petition as part of the amount in controversy,<sup>5</sup> and states may include attorney's fees in the absence of a statutory exclusion when other exclusions are specified.<sup>6</sup> When a statute does not distinguish between damages and attorney's fees in setting the total jurisdictional amount recoverable, the court will decline to recognize such a distinction.<sup>7</sup>

Attorney's fees claimed as part of the damages recoverable, or, on the basis of an express promise contained in the instrument, claimed as a part of the specific demand, are properly considered in determining the amount in controversy for jurisdictional purposes,<sup>8</sup> but the amount in controversy excludes attorney's fees that are not capable of being calculated when the action is commenced.<sup>9</sup>

### *Attorney's fees as costs.*

In general, attorney's fees which are allowable only as costs are not taken into consideration in determining the amount in controversy for jurisdictional purposes when costs are excluded from the calculation.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Internal Revenue Service's (IRS) determination that attorney's single-person S corporation had mischaracterized some of compensation it paid to attorney as dividends, rather than as wages, and thus was required to pay additional employment taxes, did not give rise to actual controversy as to whether attorney was "employee," and thus Tax Court lacked subject matter jurisdiction over corporation's petition challenging IRS's determination. [26 U.S.C.A. § 7436\(a\)\(1\)](#). [Martin S. Azarian, P.A. v. Commissioner of Internal Revenue](#), 897 F.3d 943 (8th Cir. 2018).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Haw.—Jen-Pac Travel Service, Inc. v. Fung Lee Kwong Co., Ltd.](#), 72 Haw. 228, 814 P.2d 393 (1991).  
[La.—F.G. Bruschweiler \(Antiques\) Ltd. v. GBA Great British Antiques, L.L.C.](#), 860 So. 2d 644 (La. Ct. App. 5th Cir. 2003), writ denied, 869 So. 2d 859 (La. 2004).

Ohio—*Schultz v. Wurdlow*, 2012-Ohio-3163, 2012 WL 2859914 (Ohio Ct. App. 10th Dist. Franklin County 2012).

Wis.—*Reusch v. Roob*, 2000 WI App 76, 234 Wis. 2d 270, 610 N.W.2d 168 (Ct. App. 2000).

**No bad faith exception to exclusion**

Ohio—*Staffilino Chevrolet, Inc. v. Balk*, 158 Ohio App. 3d 1, 2004-Ohio-3633, 813 N.E.2d 940 (7th Dist. Belmont County 2004).

2 Tex.—*Serrano v. Francis Properties I, Ltd.*, 411 S.W.3d 661 (Tex. App. El Paso 2013), review dismissed w.o.j., (Oct. 24, 2014).

3 Ohio—*Bowling v. Stafford & Stafford Co., L.P.A.*, 2008-Ohio-3768, 2008 WL 2924738 (Ohio Ct. App. 1st Dist. Hamilton County 2008).

4 N.Y.—*Metrotran Advertising Trust Fund v. Cado Trans., Inc.*, 156 Misc. 2d 725, 601 N.Y.S.2d 684 (N.Y. City Civ. Ct. 1993).

5 N.Y.—*Bay Crest Ass'n v. Paar*, 47 Misc. 3d 9, 4 N.Y.S.3d 812 (App. Term 2015) (part of cause of action).

Tex.—*Terra XXI, Ltd. v. AG Acceptance Corp.*, 280 S.W.3d 414 (Tex. App. Amarillo 2008).

**Unspecified amount**

When a plaintiff seeks an amount of damages that falls within a court's jurisdictional limit and also seeks reasonable attorney's fees in an unspecified amount, the court has jurisdiction.

Tex.—*Garza v. Chavarria*, 155 S.W.3d 252 (Tex. App. El Paso 2004).

6 Ark.—*Piper v. Potlatch Federal Credit Union*, 2009 Ark. App. 701, 371 S.W.3d 704 (2009).

7 Ind.—*Pinnacle Properties v. Saulka*, 693 N.E.2d 101 (Ind. Ct. App. 1998).

8 N.J.—*Wisser v. Kaufman Carpet Co., Inc.*, 188 N.J. Super. 574, 458 A.2d 119 (App. Div. 1983).

9 N.J.—*Surf Cottages Homeowners Ass'n, Inc. v. Janel Associates, Inc.*, 362 N.J. Super. 70, 826 A.2d 818 (App. Div. 2003).

10 Ohio—*Schultz v. Wurdlow*, 2012-Ohio-3163, 2012 WL 2859914 (Ohio Ct. App. 10th Dist. Franklin County 2012).

Or.—*Anderson v. Garrison-Reed Enterprises, Inc.*, 66 Or. App. 872, 676 P.2d 350 (1984).